



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248

Patrick J. Ward, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 070011

Petitioner, 76 Green Street, LLC, applied to the Building Commissioner for permission to construct a new building containing five residential dwelling units with below grade parking per plans at 76 Green Street. The application was denied and an appeal was taken to this Board.

On February 1, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 5, 2007, at 7:45 p.m., as the time and place of a hearing on the appeal in the Selectmen's Hearing room on the sixth floor of the Town Hall. Notice of the scheduled hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published March 1, 2007 and March 8, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: 76 Green Street, LLC

Location of Premises: 76 GREEN ST BRKL

Date of Hearing: 04/05/2007

Time of Hearing: 7:45 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th. Floor

A public hearing will be held for a variance and/or special permit from

1. 4:07; Table of Use Regulations; Use #6; Special Permit Required; and regulated by 3.03.6.1.h.2.
2. 4.08.4; Affordable Housing Requirements; Special Permit Required.
3. 4.08.6.a; Affordable Housing Requirements; Variance Required.
4. 5.09.2.d; Design Review; Special Permit Required.
5. 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
6. 5.44.4; Accessory Underground Structures; Special Permit Required.
7. 5.50; Front Yard Requirements; Variance Required.
8. 5.51; Projections into Front Yards; Variance Required.
9. 5.52; Fences and Terraces in Front Yards; Variance Required.
10. 5.55; Front Yard for Rear Lot; Variance Required.
11. 5.70; Rear Yard Requirements; Variance Required.
12. 5.71; Projections into Rear Yards; Variance Required.
13. For the Design of All Off-Street Parking Facilities:
 - 6.04.2.a; Variance Required.
 - 6.04.2.b; Variance Required.
 - 6.04.2.d; Variance Required.
 - 6.04.4.b; Variance Required.
 - 6.04.5.b; Variance Required.
 - 6.04.5.e; Special Permit Required.

Of the Zoning By-Law to construct a new building containing five residential dwelling units with below grade parking per plans

at 76 GREEN ST BRKL

Said Premise located in a M-1.0 district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make

their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

Publish: March 1, 2007 and March 8, 2007.

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Harry S. Miller, Bailey Silbert and Enid Starr. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Lara Curtis, Planner of the Planning Department distributed the Planning Board Report dated March 8, 2007. Mr. Allen then described the factual background for the petition as follows:

76 Green Street is an 11,462 s.f. lot located near the intersection of Green Street and Dwight Street in the Coolidge Corner area. Abutting the property to the left is Young Israel of Brookline; to the right is a single-family dwelling and six-unit multi-family dwelling. To the rear of the lot are several multi-family buildings and a long, low-rise garage building. The surrounding neighborhood is primarily residential. Currently on the site is a two-story building, which together with the building located at 74 Green Street, was previously used as a school. An ANR plan subdividing the site into two lots was endorsed by the Planning Board in 2006. The lot is located in the Coolidge Corner Interim Planning Overlay District (IPOD).

The Petitioner proposes to demolish the existing school building and construct a five-unit residential building with underground parking for 11 vehicles. This application is separate from, but in conjunction with, a proposal by the same developer for another five-unit residential building, also with below grade parking for 11 vehicles, at 74 Green Street. The two

developments will share a driveway and common underground garage, which will have a total of 22 parking spaces. An affordable housing payment calculated on the basis of the two projects, or ten units, will be provided to the Town.

The proposed brick building will be three-and-a-half stories tall (39.7 feet) and located approximately 15 feet from its front lot line, approximately 45 feet behind the structure proposed at 74 Green Street. A 20-foot-wide common driveway will be located on the lot's access strip in front of the building, leading to the underground garage. Primary pedestrian access for the building will be provided by a walkway running from Green Street along the length of the proposed building at 74 Green Street. A covered porch area runs the length of the building's front façade. The building will have approximately 9,504 s.f. in floor area.

The underground garage will have 22 parking spaces (11 dedicated to 76 Green Street), two of which will be handicapped accessible. A metal garage door will control access to the garage at the bottom of the driveway ramp. Storage areas, mechanical rooms, and a common trash area will all be provided for in the underground structure. The garage will have two elevator lobbies (one for each building), and secondary egresses at the rear and along the right side of the building. A common driveway ramp leading into the garage will be constructed five feet away from the side lot line with retaining walls on each side starting approximately 25 feet from the front lot line. The change in grade from the ramp entryway to the garage entrance is approximately eight feet.

The zoning relief required is as follows:

Section 4.07 – Table of Use Regulations: Special Permit Required*

Section 4.08.4 – Affordable Housing Requirements: Special Permit Required

Section 4.08.6.a – Affordable Housing Requirements: Projects may not be phased or segmented to avoid compliance with affordable housing requirements

Section 5.09.2.d – Design Review: Special Permit Required

Section 5.44.4 – Accessory Underground Structures

Section 5.50 – Front Yard Requirements

Section 5.51 – Projections into Front Yard

Section 5.52 – Fences and Terraces in Front Yards

Section 5.55 – Front Yard for Rear Lot

Section 5.70 – Rear Yard Requirements

Section 5.71 – Projections into Rear Yards

Section 6.04 – Design of All Off-Street Parking Facilities

.2.a – standard and compact stall width

.2.b – standard and compact stall depth

.2.d – minimum aisle width

.4.b – minimum width of two-way entrance/exit drive

.5.b – parking lot and entrance/exit drive setback

Section 6.04.5.e – Common Driveway: Special permit required to establish a common driveway for adjoining properties

Site Plan and Building

	<u>Required/Minimum</u>	<u>Proposed</u>	<u>Finding</u>
Multiple or Attached Dwelling	3-5 units by special permit	5 units	Special Permit*
Side Yard Setback (building)	14.7 feet (10 + L/10)	15.2 feet to 15.7 feet	Complies
Front Yard Setback (building)	30 feet	12 feet to 15 feet	Variance / Special Permit**
Rear Yard Setback (building)	30 feet	15.9 feet to 30 feet	Variance / Special Permit**
Front Yard Setback (underground garage)	10 feet	0 feet	Variance / Special Permit†
Side Yard Setback (underground garage)	10 feet	5 feet to 17 feet	Variance / Special Permit†
Rear Yard Setback (underground garage)	10 feet	11 feet to 30 feet	Complies
Usable Open Space	1,901 s.f. (20%)	3,671 s.f. (39%)	Complies
Landscaped Open Space	950 s.f. (10%)	2,315 s.f. (24%)	Complies
Floor Area Ratio	1.0 (11,462 s.f.)	0.8 (9,504 s.f.)	Complies

* In the Coolidge Corner IPOD, a development of three to five units may be permitted by special permit as provided in Section 9.05 and Section 3.03.6.1.h.2. Projects over five units would require a variance.

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if the petitioner provides a counterbalancing amenity. Landscaping and any privacy screening requested by abutters would be counterbalancing amenities for this proposal.

- † Under Section 5.44.4, the Board of Appeals may modify the setback requirements and height limitations for underground accessory structures provided that the modification is counterbalanced by appropriate landscaping and screening.

Parking Facilities

	<u>Required/Minimum</u>	<u>Proposed</u>	<u>Finding</u>
Stall Width	7.5 feet (compact) 8.5 feet (standard)	8.5 feet to 9 feet	Complies
Stall Depth	16 feet to 18 feet	18 feet	Complies
Aisle Width	20 feet to 23 feet	23 feet	Complies
Entrance/Exit Drive Width	20 feet (two-way use)	20 feet	Complies
Entrance/Exit Drive Setback	10 feet from street 5 feet from lot lines	15 feet from street 5 feet from lot line	Complies

The Chairperson inquired if any members of the public wished to be heard in regard to the Petitioner's proposal. One member of the public raised concerns regarding traffic and off-street parking. Two members of the public expressed concerns as to landscaping and noise from the mechanical and HVAC systems.

Lara Curtis, on behalf of the Planning Board, gave the following report:

The Planning Board is supportive of this application to construct a five-unit residential building on the lot at 76 Green Street with a common driveway and underground garage. The new building is not expected to significantly impact abutting properties, and the setback relief required is minimal. The building is of a similar scale as those already in the neighborhood. The proposal would provide sufficient usable and landscaped open space for its residents, and the site plan relates well with the surrounding neighborhood. The immediate area near the proposed building on abutting properties is primarily used for parking and fire access and provides a substantial buffer between the proposed building and existing residential properties. Additionally, the applicant is willingly meeting the affordable housing requirements of the Zoning By-law for ten units and thus avoids the perception of segmenting the development to circumvent affordable housing payments.

Therefore, the Planning Board recommends approval of the plans prepared by CYMA2 Architects, titled "Lot B, Green Street Condominiums," and last dated 12/21/06, subject to conditions.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the proposed development and will ensure that all State Code provisions are satisfied.

The Board further deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant the relief requested by this petitioner, subject to certain conditions.

The Board considered the visual relationships of the proposed five-unit buildings to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed development will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not cause a nuisance or serious hazard to vehicles or pedestrians. The building, driveways, walkways, below-grade parking garage and open space are functional and are proper for the proposed use. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed five-unit building with below-grade parking.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The construction of a five-unit building with underground parking, as proposed, will not have a significant adverse affect on the supply of housing available for low and moderate income people.
6. The proposal is comparable to adjacent uses in regards to massing and scaling and the relationship of building to the street edge.

Accordingly, the Board grants special permits for the construction of a five-unit building with underground parking pursuant to Sections 3.03.6.1.h.2, 4.07, 4.08.4, 5.09.2.d, 5.43, 5.44.4, subject to the following condition:

1. Prior to the issuance of a building permit, plans and elevations indicating the final design of facades, colors, materials, windows, rooftop details, walls, and placement of utilities for HVAC and transformers shall be submitted for the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, plans indicating the final site design, including landscaping and garage or surface parking, shall be submitted for the review and approval of the Planning Board.
3. Prior to the issuance of a building permit, the Petitioner shall record the mutual easements for the common driveway, garage and pedestrian walkway at the Registry of Deeds, and evidence of such recording shall be submitted to the Zoning

Administrator. The easements shall be recorded in order for the special permit to become effective.

4. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units," approved January 7, 2004, and with the choice of the applicant to make cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation upon the sale of each unit:

A sum equal to six percent (6%) of the adjusted sales price of the unit (actual sales price, including the cost of all parking, less an exemption deduction of \$125,000) shall be deducted from the net proceeds due the seller for each of the ten units at 74 and 76 Green Street, and provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check shall be mailed, accompanied by a copy of the HUD settlement statement, signed by the seller and buyer, and a copy of unit deed, by first class mail or hand delivery to:

Director of Planning & Community Development
333 Washington Street - 2nd Floor
Brookline, MA 02445

If any condominium unit(s) is/are to be rented by the owner instead of sold, the cash payments relative to the units being rented shall be immediately due and payable,

unless, upon a request by the owner due to a significant change in market conditions, the Director of Planning and Community Development approves a different schedule of payments.

Prior to issuance of a Building Permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

5. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department.
6. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.
7. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, fencing, grading, and location of utilities;

2) building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeal



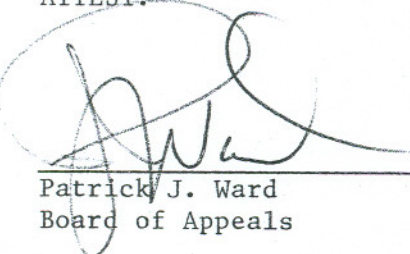
Harry S. Miller

Filing Date: May 15, 2007

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A True Copy:

ATTEST:



Patrick J. Ward
Board of Appeals